IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

**O R D E R**

GURDEEP SINGH V/S STATE & ORS

S.B.CIVIL WRIT No. 2183 of 1994

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Date of order : 2.2.2007

**PRESENT**
**HON'BLE SHRI N.P.GUPTA,J.**

Mr. SUDHIR SHARMA, for the petitioner.
Mr. OP BOOB, AGA, for the respondent.

**BY THE COURT:**

By this petition, the petitioner seeks to challenge Annexure-2, being the communication of the Collector, whereby the petitioner was called upon to get the period of kiln renewed, as it has already expired on 5.2.1994, and since the petitioner has not applied for renewal, he was directed to stop the kiln.

Learned counsel for the petitioner relies upon a judgment of Full Bench of this Court, in Mohd. Bux Vs. State of Rajasthan, reported in 1993(2) WLC(Raj.)-11.

I have gone through this judgment. This was a

reference made by the learned Single Judge of this Court formulating four questions quoted in para-1 which read as under:-

> "1. Whether under the Rules of 1977 in the lease of brick-earth, establishment of brick-kiln is also implied and if so whether subject matter of allotment of sites for establishment of brick-kilns is covered by the Rules of 1977?
>
> 2. Whether the Rajasthan Colonisation Project Areas Brick Kiln (Leases) Conditions, 1966 only deal with the allotment of sites for the establishment of brick-kiln, a subject covered by Entry 18 of the List I of Schedule VII of the Constitution and as such are valid?
>
> 3. Whether the Rajasthan Colonisation Project Areas Brick Kiln (Leases) Conditions, 1966 are beyond the authority of the State Government and as such ultra vires of its powers?
>
> 4. Whether the view of this Court in Shivchand Goyal v. State of Rajasthan (RLW 1967 p. 30) that in the lease of brick earth granted under the Rajasthan Minor Mineral Concession Rules, 1977 framed under Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 the establishment of brick-kiln is implied is not good law, and if so whether establishment of brick-kiln is a subject not covered by Entry no. 54 of the List I (Union List) of Schedule VII of the Constitution and is covered by entry 18 of List II of Schedule VII of the Constitution and as such the Conditions of 1966 are valid?"

Thus the two questions being questions no. 2 and 3 clearly comprehend the question of validity of Rajasthan Colonisation Project Areas Brick Kiln (Leases) Conditions, 1966, hereafter to be referred to as the Conditions of 1966. Then, the provisions of Mines and Minerals (Regulation and Development) Act, 1957, hereafter to be referred as the Act of 1957, and Rajasthan Minor Mineral

Concession Rules, 1977, hereafter to be referred as to the Rules of 1977 were referred. Then, it was considered as to, to what extent the Rules of 1977 and Conditions of 1966 can hold the field, and to what extent they run contrary to each other, and it was held, that the grant of mining lease shall be covered by the procedure given in the Rules of 1977, therefore, the Conditions of 1966 cannot hold the field, and the Conditions to that extent are ultra vires. Then, it was examined as to whether the grant of lease can be governed by the Conditions or not, and was answered in negative, as it is governed by the Rules of 1977. Then, the procedure prescribed for allotment of land, contained in Conditions no. 6, 7, 9 and 10 etc. were found to be ultravires. Then, examining various entries, being entry 18 of List II of the Seventh Schedule, and entry 54 of List I of Seventh Schedule, it was held, that entry 18 does not confer any power on the State Government to frame Conditions of 1966 for regulating the grant of leases for mining operations. In the result question no.2 was answered in the manner, that the Conditions no. 6, 7, 9, 10, 11 and 12 were held ultravires, and answering question no. 3 it was held, that the Conditions are beyond the authority/ competence of the State Government, to the extent of grant of mining leases.

In the present case by Annexure-1 the petitioner claims to have been granted mining lease for a period of 10

years from 6.2.1989. Annexure-2 has nothing to do with Annexure-1, inasmuch as according to para-2 of the writ petition the petitioner got converted the land from agricultural to non agricultural purposes for establishment of brick kiln, and this conversion was granted by the order dt. 6.2.1979. This order has not been produced. It is claimed that the condition of 10 years was imposed, and that condition appears to have been imposed in view of the provisions of Condition no. 10 of 1966 Conditions, and after expiry of ten years period application was submitted for extension of time, whereupon five years time was extended. Then, it is alleged that Mining Department granted lease to the petitioner initially for 10 years from 9.1.1979, and in 1989 it was again extended for another 10 years. Then, it is alleged that the period of lease granted by the Collector under 1966 Conditions was to expire on 5.2.1994, but in view of the judgment in Mohd. Bux case the petitioner remained under no obligation to apply for extension of time under Condition no. 10 of 1966 Conditions.

In my view the question of grant of mining lease, and grant of license for running brick kiln, are two independent things, and since admittedly the petitioner got the land converted from agricultural to non agricultural for establishment of brick kiln, and the Full Bench had struck down the conditions to the extent of grant of mining

lease but has not struck down the 1966 conditions in the matter of establishment of brick kiln. Under Condition no. 4 the Collector is to reserve the land for establishment of brick kiln on the government land, and if government land is not available may allot Khatedari lands as per Part-C. Then, according to further provisions of these conditions the area is to be demarcated and leased out at the prescribed rates, and the lessee is required to execute agreement in the form Annexure II. It is significant to note that according to various clauses of Condition no. 11, lessee is not to excavate clay or earth, or start any mining operation, or prepare any bricks, without first obtaining mining lease, under the then prevalent Minor Mineral Rules, from the Mining Department. Obviously, therefore, the lease as held by the Full Bench in Mohd. Bux's case could not be granted for excavation of mineral, but could be very well granted for establishing brick kiln, for the period, and by charging the rates, as prescribed. It is in this sequence, that Part(C) makes provision for conversion of Khatedari lands: and according to Condition no. 20 after the land is surrendered by Khatedar it is to be allotted to him on the terms and conditions mentioned in the lease, and the lessee is to pay the lease amount to the tune of Rs. 400/- per Bigha per annum. In that view of the matter, since the present controversy is not regarding the grant of mining lease by the Colonisation Authorities/ Collector, but is the question of grant of lease to run

brick kiln, and the matter of grant of lease for excavation of mineral for the purpose of running kiln is a matter covered by Annexure-1. In that view of the matter, Annexure-2 cannot be said to be hit by the judgment in Mohd. Bux's case.

It is also significant to note, that the petitioner has not produced the lease granted by the Collector for the brick kiln, nor has he produced its renewal, which would have made it clear, that lease for running brick kiln and lease for excavation of mineral are entire two different things, and the provisions of matter of grant to run brick kiln, excluding the matter of grant of mining lease, has not been struck down by the Full Bench in Mohd. Bux's case.

The net result of the aforesaid discussion is that I do not find any force in the writ petition. The same is, therefore, dismissed.

( N P GUPTA ),J.

/Sushil/